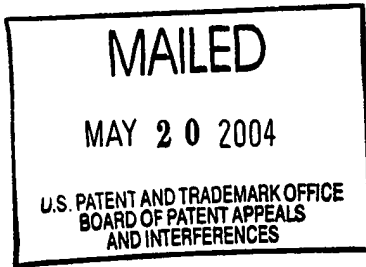


UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES



Ex parte JOHN M. SHANAHAN

Appeal No. 2004-1276
Application 09/888,145

ORDER REMANDING TO EXAMINER

A Reply Brief was facsimile transmitted on May 5, 2004 (Paper No. 14) and has been matched with this application at the Board of Patent Appeals and Interferences. A determination as to whether the Reply Brief should be entered must be made by the Primary Examiner.

On December 1, 1997, the rule pertaining to the Examiner's Answer and Reply Brief, 37 CFR § 1.193, was amended to read as follows:

§ 1.193 Examiner's answer and reply brief.

. . .

(b)(1) Appellant may file a reply brief to an examiner's answer within two months from the date of such examiner's answer. . . .

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The primary examiner must either acknowledge receipt and entry of the reply brief or withdraw the final rejection and reopen prosecution to respond to the reply brief. A supplemental examiner's answer is not permitted, unless the application has been remanded by the Board of Patent Appeals and Interferences for such purpose.

(2) Where prosecution is reopened by the primary examiner after an appeal or reply brief has been filed, appellant must exercise one of the following two options to avoid abandonment of the application:

(i) File a reply under § 1.111, if the Office action is not final, or a reply under § 1.113, if the Office action is final; or

(ii) Request reinstatement of the appeal. If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (§§ 1.130, 1.131 or 1.132) or other evidence are permitted.

Accordingly, it is

ORDERED that the application is remanded to the

Examiner:

1. for consideration of the Reply Brief filed May 5, 2004 (Paper No. 14);

2. for written notification to appellant regarding the Examiner's decision; and

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3. for such further action as may be appropriate.

It is important that the Board of Patent Appeals and Interferences be informed promptly of any action affecting the status of the appeal (i.e., abandonment, issue, reopening prosecution).

BOARD OF PATENT APPEALS
AND INTERFERENCES

By: 

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